

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6168

BILL NUMBER: SB 13

NOTE PREPARED: May 1, 2003

BILL AMENDED: Apr 26, 2003

SUBJECT: Newly Discovered Evidence.

FIRST AUTHOR: Sen. Bowser

FIRST SPONSOR: Rep. Kuzman

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that if a person is sentenced to death and has completed state postconviction review proceedings, the person may file a written petition with the Supreme Court seeking to present undiscovered evidence challenging the person's guilt or the appropriateness of the death sentence, if the person also notifies the Attorney General.

This bill also requires the Supreme Court to determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or sentence, and permits the Supreme Court to remand the cause to the trial court for an evidentiary hearing; however, the Supreme Court may neither make a determination in the person's favor nor remand the cause to the trial court without providing the Attorney General with an opportunity to be heard on the matter.

Effective Date: July 1, 2003.

Explanation of State Expenditures: If new evidence is permitted to be admitted into record, then the Supreme Court may order a new trial, additional reviews, or resentencing to either life without parole or a term of years. If additional trials occur, then counties may request additional reimbursements from the Public Defense Fund. The Attorney General would need to be heard on the matter.

The following shows the reimbursements from the Public Defense Fund for capital cases over the past five years.

| Fiscal Year | 1998 | 1999 | 2000 | 2001 | 2002 |
|----------------------------------|-------------|-------------|-------------|-------------|-------------|
| Reimbursements for Capital Cases | \$799,450 | \$526,512 | \$378,209 | \$712,055 | \$473,317 |

The Public Defense Fund receives \$2.4 M annually in transfers from the General Fund and an additional appropriation of \$4.6 M for FY 2003.

Background: Indiana law and rules of court provide for the following levels of review by courts when a death penalty is imposed.

| Review Level | Court of Review | Issues Permitted To Be Raised |
|------------------------------|----------------------------------|--|
| Direct Appeal | State Supreme Court | Defendant required to show that what happened at trial was legally erroneous. Defendant may not present new evidence. |
| Post Conviction Relief (PCR) | Trial Court | Newly discovered evidence such as DNA and other issues may be presented. |
| Subsequent Appeal of PCR | State Supreme Court | Decides on the evidence presented at the PCR review. |
| Federal Habeas Corpus Review | Seventh Circuit Court of Appeals | Federal courts may not grant relief if the claim was waived in the state court or if the issue was not presented or properly presented in state court. |

As of November 2002, the Indiana Supreme Court reported that 41 offenders were on Death Row in Indiana at various stages of federal and state review. The Indiana State Supreme Court reports that these offenders are at the following stages of appeal.

| Stage | Number of Offenders |
|------------------------|----------------------------|
| Federal Appeal | 26 |
| Post Conviction Relief | 8 |
| Direct Appeal | 7 |
| Total Offenders | 41 |

Explanation of State Revenues:

Explanation of Local Expenditures: If a new trial is ordered, the county where the death penalty was originally requested may need to have a new trial.

Legislative Services Agency staff, for the Criminal Law Study Commission, compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical” death penalty trial and a trial where life without parole is the most serious sentence.

| Cost Components for Murder Trials: | | |
|---|-----------------------------|-----------------------------------|
| | <u>Death Penalty</u> | <u>Life Without Parole</u> |
| Attorneys and Related Costs | \$215,608 | \$45,617 |
| Jury and Related Costs | \$46,375 | \$10,150 |
| Cost of Appeals | \$54,355 | \$5,466 |
| Prosecuting Attorney | \$2,340 | \$2,948 |
| County Sheriff | \$8,472 | \$4,380 |
| Total Costs | <u>\$327,150</u> | <u>\$68,561</u> |

The costs of legal representation for a criminal defendant in a death penalty case are between four and five times as expensive compared to the costs of a criminal trial in which the most serious sentence is life without parole. This is because Criminal Rule 24 of the Indiana Supreme Court requires that a criminal defendant in a death penalty case receive two attorneys and an almost unlimited expense account.

Explanation of Local Revenues:

State Agencies Affected: State Supreme Court, Office of the Attorney General, State Public Defender's Office, Department of Correction.

Local Agencies Affected: Trial Courts, Prosecuting Attorney.

Information Sources: *The Application of Indiana's Capital Sentencing Law: Findings of the Indiana Criminal Law Study Commission*, January 10, 2002.

Fiscal Analyst: Mark Goodpaster, 232-9852